

BEFORE THE
DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	
)	
JERRY CURTIS FOX, M.D.)	
3733 San Dimas, Suite 107-A)	
Bakersfield, CA 93301)	NO. D-3764
)	
Physician's and Surgeon's)	
Certificate No. A024108)	
Physician's Assistant Supervisor)	L-43279
Approval No. SA011016,)	
)	
)	
Respondent.)	
_____)	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Division of Medical Quality, Board of Medical Quality Assurance as its decision in the above-entitled matter.

This Decision shall become effective July 7, 1989.

IT IS SO ORDERED June 7, 1989

DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BY



THERESA CLAASSEN
Secretary/Treasurer

hk

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Respondent.)	
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PROPOSED DECISION

This matter came on regularly for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Bakersfield, California, on March 16, 1989.

Stephen Handin, Deputy Attorney General, represented the complainant.

Respondent appeared in person and was represented by Dennis Thelen, Attorney at Law.

Oral and documentary evidence and evidence by way of official notice and stipulation was received. The cause was then argued and thereafter submitted.

The Administrative Law Judge now finds, determines, and orders as follows:

FINDINGS OF FACT

RE: PARTIES AND JURISDICTION

1.

Complainant, Kenneth J. Wagstaff, Executive Director of the Board of Medical Quality Assurance brought subject accusation on behalf of the Division of Medical Quality in said official capacity.

2.

(A) On March 1, 1971, said Board issued physician's and surgeon's certificate number A 024108 to Jerry Curtis Fox, M.D., respondent herein. Said certificate has since been in full force and effect.

(B) In 1979, the Division of Allied Health Professions of the Board issued physician's assistant supervisor approval number SA 11016 to respondent. Said approval has since been in full force and effect.

3.

All pre-hearing jurisdictional requirements have been met. Jurisdiction for this proceeding does exist.

FINDINGS OF FACT

RE: ACCUSATION

4.

Respondent failed professional competency examinations which were held on June 2, 1987 and October 12, 1987.

SUPPLEMENTAL FINDINGS

RE: AGENCY'S CASE

5.

(A) On June 2, 1987, pursuant to the provision of Business and Professions Code Section 2293(a) respondent voluntarily submitted to an oral clinical examination administered by two physicians (MDs) who specialize in respondent's discipline - obstetrics and gynecology (OB/GYN). The examination involved eleven distinct areas within the OB/GYN

discipline. At the conclusion of the examination each examiner, separately, graded respondent. Respondent received a 6.09 from one examiner and 5.9 from the other, thus falling short of the passing grade of 7.0.

(B) Thereafter, in accordance with said section 2293(b) respondent submitted to a second oral clinical examination, on October 12, 1987, conducted by two other MDs specializing in OB/GYN. The exam involved ten distinct areas within the OB/GYN discipline. Respondent, separately graded by each examiner, received scores of 5.3 and 5.4, again following below the passing grade of 7.0.

(C) With regard to the examinations and the examining process the following was established:

Respondent was tested as to his general obstetrical knowledge without regard to his personal practice, mode of practice, race, religion, or any other personal factors. The format of the said examinations were as would be encountered if he were taking oral Board Examinations in the field of obstetrics; the thrust of the questions were geared to clinical application of obstetrical knowledge as would reasonably be expected of anyone practicing presently, the full range of obstetrics.

The examination was regularly conducted by the MD examiners, competent in OB/GYN and regularly tested, inter alia, respondent's current medical knowledge.

6.

Other than establishing respondent's failure to pass the said June 2 and October 12 examinations (reports of all examiners were received pursuant to Section 2293(d)) complainant proffered no other evidence with regard to respondent on the issue of respondent's competency and, other than what can be reasonably inferred from such failure complainant proffered no evidence that respondent is a present danger to prospective patients. It is here found the respondent's failure of said examinations does establish, per se, a clear deficiency in medical knowledge, and does, accordingly, constitute incompetency and is, therefore, unprofessional conduct.

FINDINGS RE: RESPONDENT'S CASE

7.

(A) Respondent, 47 years of age was raised in Las Vegas, Nevada in a "ghetto" area. In 1960 he graduated from high school and received an academic scholarship to the University of San Francisco (a Jesuit school) and did, in

1964, receive from said USF a BS degree in Biology. Thereafter he entered the University of Oregon Medical School graduating in 1968.

He served a "rotating" internship for one year at Kern Medical Center (KMC) in Bakersfield beginning June, 1968 and then undertook and completed, in June 1972, a three year OB/GYN residency at KMC (which included six-months medical training at UCLA).

(B) Respondent entered "private practice" in Bakersfield in July, 1972 and continues in same to the present. He has staff privileges in each of Bakersfield's five hospitals - KMC, Bakersfield Community; San Joaquin; Bakersfield Memorial; Bakersfield Mercy. In 1976 he served as chief-of-staff at San Joaquin Hospital and has chaired or served on committees, over the years, at each of said institutions.

(C) Respondent has never sat for Board certification in OB/GYN having a continuing reluctance to undergo the required oral examination.

8.

(A) Respondent's OB/GYN practice consists primarily of "Medical" patients (all of whom are low-income); other low-income patients including many "non-compliant" patients. In 1987 he had 361 vaginal deliveries and in excess of 400 of same in 1988. He completed in excess of 500 surgical procedures over those said years. He receives many "Medical" referrals from other OB/GYN MDs who do not accept "Medical" cases. He also receives "public subsistence" referrals and "early pregnancy termination" referrals for the same reason.

(B) Respondent has achieved respect from his fellow OB/GYNs in Bakersfield for administering to the financially distressed and disadvantaged and "for being their champion". He does treat those patients who are, more likely, high-risk patients and, less likely, to follow the instructions of a treating M.D. In the words of one of his colleagues (who does not accept "Medical" patients and thus refers them to respondent): "He (respondent) is challenged daily with the most difficult cases - those of the indigent". In the opinion of certain of his colleagues respondent is diligent; hard working; compassionate. Said opinions are competent and credible opinions supported by the whole of the evidence and reasonable inferences therefrom.

9.

It was established, by the whole of the evidence and reasonable inferences therefrom, that respondent in a general office or hospital setting does, from time to time, possess sufficient medical skill (as opposed to medical knowledge) to deal with his present case load but respondent did not establish that he has, at present, sufficient medical knowledge to administer the same standard of care administered by other OB/GYNs in the San Joaquin Valley area.

* * * * *

DETERMINATION OF ISSUES

I

Cause exists for discipline of respondent's certificate and approval pursuant to Business and Professions Code (hereinafter "Code") Sections 3527(d), 2234(d) and 2293(c) by reason of Findings 4, 5 and 6 collectively.

II

The objective of an administrative proceedings relating to discipline, if any, of a license is to protect the public; to determine whether a licensee has exercised his privilege in derogation of the public interest. Such proceedings are not for the primary purpose of punishing an individual. Camacho v. Youde (1979) 95 Cal.App.3d 161, 165. There is no evidence - other than Finding 4 - that respondent has exercised his privilege in derogation of the public interest. In light of the foregoing a properly conditioned probationary period with express conditions and without actual suspension, would not be contrary to the public interest.

* * * * *

ORDER

All licenses and licensing rights of respondent set forth in Finding 2, heretofore issued to respondent, are hereby revoked; provided, however, that execution of said order of revocation is hereby stayed for a period of five (5) years and respondent is placed on probation for said five (5) years upon the following terms and conditions:

I

Within 60 days of the effective date of this decision, respondent shall take and pass an oral or written exam, in a subject to be designated and administered by Division or its designee. If respondent fails this examination, respondent must take and pass a re-examination consisting of a written as well as an oral examination. The waiting period between repeat examinations shall be at three-month intervals until success is achieved. The Division shall pay the cost of the first examination and respondent shall pay the cost of any subsequent re-examinations.

If respondent fails the first examination, respondent shall cease the practice of medicine until the re-examination has been successfully passed, as evidenced by written notice to respondent from the Division. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.

II

Within 90 days of the effective date of this decision, respondent shall submit to the Division for its prior approval, an intensive clinical training program. The exact number of hours and the specific content of the program shall be determined by the Division or its designee. Respondent shall successfully complete the training program and may be required to pass an examination administered by the Division or its designee related to the program's contents.

III

Within 30 days of the effective date of this decision, respondent shall submit to the Division for its prior approval a plan of practice in which respondent's practice shall be monitored by another physician in respondent's field of practice, who shall provide periodic reports to the Division.

If the monitor resigns or is no longer available, respondent shall, within 15 days, move to have a new monitor appointed, through nomination by respondent and approval by the Division.

IV

Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

V

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

VI

Respondent shall comply with the Division's probation surveillance program.

VII

Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.

VIII

The period of probation shall not run during the time respondent is residing or practicing outside the jurisdiction of California. If, during probation, respondent moves out of the jurisdiction of California to reside or practice elsewhere, respondent is required to immediately notify the Division in writing of the date of departure, and the date of return, if any.

IX

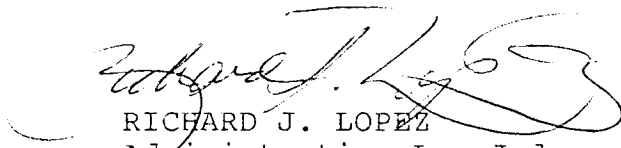
If an accusation or petition to revoke probation is filed against respondent during probation the Board of Medical Quality Assurance shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

X

Upon full compliance with the terms and conditions herein set forth and upon the expiration of the probationary period, respondent's licenses shall be restored to their full privileges; provided, however, that in the event respondent violates or fails to comply with any of the terms and conditions hereof, the Board of Medical Quality Assurance, after notice to respondent and opportunity to be heard, may terminate this probation and reinstate the

revocation or make such other order modifying the terms and probation herein as it deems just and reasonable in its discretion.

DATED: April 3, 1989


RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:hk

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8 Attorneys for Complainant

9 BEFORE THE
10 DIVISION OF MEDICAL QUALITY
11 BOARD OF MEDICAL QUALITY ASSURANCE
12 DEPARTMENT OF CONSUMER AFFAIRS
13 STATE OF CALIFORNIA

14 In the Matter of the Accusation
15 Against:

16 JERRY CURTIS FOX, M.D.
17 3733 San Dimas, Suite 107-A
18 Bakersfield, CA 93301

19 Physician's and Surgeon's
20 Certificate No. A024108
21 Physician's Assistant Supervisor
22 Approval No. SA011016,

23 Respondent.

24 NO. D-3764

25 ACCUSATION

26 Complainant, Kenneth J. Wagstaff, alleges as follows:

27 1. He is the Executive Director of the Board of Medical
Quality Assurance (hereinafter the "board") and brings this
action on behalf of the Division of Medical Quality (hereinafter
the "division") solely in his official capacity.

2. On or about March 1, 1971, the board issued
physician's and surgeon's certificate number A 024108 to Jerry
Curtis Fox, M.D. (hereinafter "respondent"). Said certificate has

1 since been in full force and effect.

2 3. In or about 1979, the Division of Allied Health
3 Professions of the board issued physician's assistant supervisor
4 approval number SA 11016 to respondent. Said approval has since
5 been in full force and effect.

6 4. Sections 2004 and 2220 of the Business and
7 Professions Code (hereinafter the "code") empower the division to
8 enforce and administer the disciplinary provisions of the Medical
9 Practice Act (§ 2000 et seq. of the code) as they apply to
10 physicians and surgeons.

11 5. Section 3527(d) of the code empowers the division to
12 discipline a physician's assistant supervisor for unprofessional
13 conduct, including violation of the Medical Practice Act.

14 6. Section 2234(d) of the code provides that
15 incompetence is unprofessional conduct and cause for discipline.


16 7. Section 2293(c) of the code empowers the division to
17 initiate disciplinary action against a licentiate for
18 incompetence if the licentiate has failed professional competency
19 examinations administered pursuant to section 2293 of the code.

20 8. Respondent's physician's and surgeon's certificate
21 and his physician's assistant supervision approval are subject to
22 discipline pursuant to section 2234(d) of the code in conjunction
23 with section 2293(c) of the code, in that he failed professional
24 competency examinations which were held on or about June 2, 1987
25 and October 12, 1987.

26 WHEREFORE, complainant prays that a hearing be had, and
27 that following said hearing, a decision issue:

- 1 1. Suspending or revoking physician's and surgeon's
2 certificate number AO24108;
3 2. Suspending or revoking physician's assistant
4 approval number SA011016; and
5 3. Taking such other action as is deemed appropriate.
6
7

8 DATED: March 25, 1988.
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11 
12 KENNETH J. WAGSTAFF
13 Executive Director
14 Division of Medical Quality
15 Board of Medical Quality Assurance
16 Department of Consumer Affairs
17 State of California

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Complainant